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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,994	06/01/2001	Laurent Herrmann	PHFR 000059	3143

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EXAMINER

OSMAN, RAMY M

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 12/14/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/872,994
Filing Date: June 01, 2001
Appellant(s): HERRMANN ET AL.

MAILED

DEC 14 2006

Technology Center 2100

John A Merecki (Reg No 35,812)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 23, 2006 appealing from the Office action mailed November 10, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Patent No 6,678,250 GRABELSKY ET AL., Jan 2004.

Patent No 6,052,734 ITO ET AL., April 2000.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 rejected under 35 U.S.C. 103(a) as being unpatentable over Grabelsky et al (US Patent No 6,678,250) in view of Ito et al (US Patent No 6,052,734).

In reference to claim 1, Grabelsky teaches a processing system comprising at least a user terminal in a user location, a server coupled to said user terminal, a communication network, and an interface device located between said network and said user terminal, said interface device comprising:

(a) means for formatting incoming data received from said terminal into packets identified by headers and that can be sent towards said network (column 4 lines 35-55 and column 6 lines 40-45, Grabelsky discloses packetizing incoming data, using RTP, to be sent to a network. RTP packets inherently include headers.);

(b) means for identifying packets received from the network and forwarding them to the terminal (column 2 lines 10-40 and column 4 lines 60-67, Grabelsky discloses routing identified packets.);

(c) means for managing and controlling, and handling a delivery monitoring service of said packets on the network, comprising:

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a receiving stage for receiving incoming packets from the network (column 4 lines 63-67 and column 6 lines 5-35);

an analysis stage for analyzing the incoming packets (column 2 lines 10-40, column 5 lines 35-57 and column 8 lines 36-51);

a statistical processing stage for computing statistics based on analysis provided by the analysis stage (column 2 lines 10-40, column 5 lines 40-50 and column 13 lines 5-20); and

a formatting stage for creating packets to be sent toward said network (column 4 lines 60-67 and column 5 line 57 – column 6 line 15).

Grabelsky fails to explicitly teach that the managing and controlling is designated to also manage and control an output bitrate, and comprises: an output bitrate adjusting stage for selectively adjusting the output bitrate based on the computed statistics, wherein the output bitrate is adjusted by providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics.

However, Ito discloses a control mixer sending communication data to receiving terminals (column 3 lines 20-24), where the communication data is adjusted by “dynamically limiting an amount of data per unit time” (column 3 lines 34-40). Ito discloses that the control mixer can provide different encoding rates of the communication data based upon RTCP statistical information contained in a Reception Report (column 3 line 66 – column 4 line 15 and column 4 lines 37-45). For example, Ito discloses that the communication data can be encoded at a high encoding rate when there is no or low congestion (column 4 lines 30-50). Ito also discloses that the communication data can be encoded at a low rate when there is serious or high congestion (column 4 lines 30-45 & 50-54). Only one of these multiple encoding rates is selected based on

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the RTCP statistical information contained in a Reception Report, so as to dynamically limit the transmission of data per unit time for the purpose of preventing deterioration of communication quality (column 1 lines 40-67 and column 2 lines 20-30).

It would have been obvious for one of ordinary skill in the art to modify Grabelsky to comprise an output bitrate adjusting stage for selectively adjusting the output bitrate based on the computed statistics, wherein the output bitrate is adjusted by providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics as per the teachings of Ito so as to dynamically limit the transmission of data per unit time for the purpose of preventing deterioration of communication quality.

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses the replies individually.

1. Appellant argues that “*Ito does not teach the adjustment of the output bitrate by providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics*”.

In reply, Ito discloses an output bitrate adjusting stage (see column 3 lines 34-39 and column 4 lines 29-36) for selectively adjusting the output bitrate (see column 3 lines 34-39 and column 4 lines 29-36) based on the computed statistics (see column 4 lines 37-45), wherein the output bitrate is adjusted by providing a plurality of bitstreams encoded at different bitrates (see column 4 lines 45-61) and selecting one of the plurality of bitstreams based on the computed statistics (see column 4 lines 37-61).

2. Appellant first states that: *“rather, Ito teaches that the bitrate of the data being transmitted to a receiving terminal is selectively adjusted based on the degree of congestion”*.

In reply, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

3. Appellant further states that: *“Ito discloses the adjustment of the bitrate of a single bitstream rather than providing a plurality of different bitstreams encoded at different bitrates and the selection of one bitstream from the plurality of bitstreams”*.

In reply, Ito discloses that the control mixer can provide different encoding rates of the communication data based upon RTCP statistical information contained in a Reception Report (column 3 line 66 – column 4 line 15 and column 4 lines 37-45). For example, Ito discloses that the communication data can be encoded at a high encoding rate when there is no or low congestion (column 4 lines 30-50). Ito also discloses that the communication data can be encoded at a low rate when there is serious or high congestion (column 4 lines 30-45 & 50-54). Only one of these multiple encoding rates is selected based on the RTCP statistical information contained in a Reception Report, so as to dynamically limit the transmission of data per unit time for the purpose of preventing deterioration of communication quality (column 1 lines 40-67 and column 2 lines 20-30).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

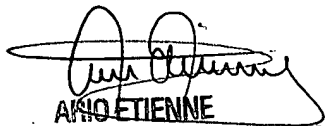
Respectfully submitted,

Ramy M Osman



December 1, 2006

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